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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JOY-CHARITY G. O'HALLORAN,  
11 Ph.D., LT, CHC, USN,

12 Plaintiff,

13 v.

14 DONALD C. WINTER, Secretary of the  
15 Navy, *et al.*,

Defendants.

Civil No. 08CV1319 JAH(NLS)

**ORDER DENYING REQUEST FOR  
TEMPORARY RESTRAINING  
ORDER**

16 Plaintiff Joy-Charity G. O'Halloran ("plaintiff"), proceeding *pro se*, has filed a  
17 complaint seeking an order for an "immediate" and "emergency injunction" to "stop  
18 [plaintiff's] separation" from military active duty. *See* Compl. at 1, 2. Because plaintiff  
19 seeks "immediate" and "emergency" relief, this Court deems it appropriate to treat  
20 plaintiff's averments as a request for a temporary restraining order pursuant to Rule 65 of  
21 the Federal Rules of Civil Procedure. A party seeking injunctive relief under Rule 65 must  
22 show either (1) a combination of likelihood of success on the merits and the possibility of  
23 irreparable harm, or (2) that serious questions going to the merits are raised and the  
24 balance of hardships tips sharply in favor of the moving party. Immigrant Assistance  
25 Project of the L.A. County of Fed'n of Labor v. INS, 306 F.3d 842, 873 (9th Cir. 2002);  
26 Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1119 (9th Cir. 1999); Roe v.  
27 Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998). "These two formulations represent two  
28 points on a sliding scale in which the required degree of irreparable harm increases as the

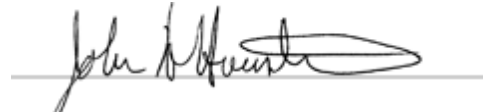
1 probability of success decreases.” Roe, 134 F.3d at 1402 (quoting United States v. Nutri-  
2 cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992)); accord Sun Microsystems, 188 F.3d at  
3 1119. “Thus, ‘the greater the relative hardship to the moving party, the less probability  
4 of success must be shown.” Sun Microsystems, 188 F.3d at 1119 (quoting Nat’l Ctr. for  
5 Immigrants Rights v. INS, 743 F.2d 1365, 1369 (9th Cir. 1984)).

6 Plaintiff is currently an active member of the United States Navy facing transfer to  
7 temporary disability retired status on July 24, 2008. See Compl., Exh. A at 1. Plaintiff  
8 requests this Court issue an order enjoining “the unlawful requirement that [plaintiff]  
9 execute military separation orders” that may violate plaintiff’s civil rights. Compl. at 2.  
10 However, this Court is mindful that certain military decisions are not subject to judicial  
11 review. See Denton v. Sec’y of the Air Force, 483 F.2d 21, 24 (9th Cir. 1973). An  
12 internal military decision is unreviewable unless the plaintiff alleges (1) a violation of the  
13 Constitution, a federal statute, or a military regulation; and (2) exhaustion of available  
14 intraservice remedies. If both of these prerequisites are met, the Court then must weigh  
15 four factors to determine whether review should be conducted: “(1) the nature and  
16 strength of the plaintiff’s claim; (2) the potential injury to the plaintiff if review is denied;  
17 (3) the extent to which review would potentially interfere with military functions; and (4)  
18 the extent to which military discretion or expertise is involved.” Briggs v. Dalton, 939  
19 F.Supp. 753, 758 (D.Haw. 1996)(citing Wallace v. Chappell, 661 F.2d 729, 733 (9th Cir.  
20 1981)).

21 This Court finds that plaintiff has failed to meet the initial prerequisite for seeking  
22 judicial review, that is, plaintiff has provided no information concerning her exhaustion  
23 of available intraservice remedies. In addition, this Court finds plaintiff’s complaint lacks  
24 sufficient factual support to allow the Court to properly weigh the applicable factors in  
25 determining whether review should be granted in this case. Plaintiff provides insufficient  
26 information from which the Court may determine the nature and strength of her claim,  
27 the potential interference with military functions this Court’s review might create or  
28 whether military discretion or expertise may be involved in the decision-making process.

1 Thus, this Court finds plaintiff has presented insufficient information in her complaint to  
2 determine whether her claims are reviewable by this Court. *See Immigrant Assistance*  
3 *Project*, 306 F.3d at 873. Therefore, this Court finds plaintiff has failed to demonstrate  
4 a likelihood of success on the merits of her claims or that serious questions going to the  
5 merits are raised here. Accordingly, IT IS HEREBY ORDERED that plaintiff's request for  
6 an "immediate," "emergency injunction" enjoining the military from releasing plaintiff  
7 from active duty, construed as a request for a temporary restraining order pursuant to  
8 Rule 65 of the Federal Rules of Civil Procedure, is **DENIED**.

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10 DATED: July 23, 2008

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12 JOHN A. HOUSTON  
13 United States District Judge  
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